IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.369 OF 2001

Vinayak Narayan Patil & Anr. .. Applicants

versus

Special Land Acquisition Officer
Matro centre No.2, Uran Dist.
Raigad & Anr .. Respondents

...

Mr.C.G. Gavnekar for the applicant.
Mr.R.S. Khandeparkar AGP for the respondents.

CORAM : D.G. KARNIK, J

DATED : 23rd August 2006.

P.C.:

1. Heard the counsel.

2. This Revision Application is directed against the order dated 2nd February 2000 passed by the Special Land Acquisition Officer, Matro Centre no.2, rejecting

the petitioners' application under section 28A(3) of the Land Acquisition Act.

3. A notification under section 4 of the Land Acquisition Act (for short 'the Act') for acquisition of the land of the petitioners and several other land owners was issued on 5th September 1970. In pursuance of the said notification, acquisition proceedings were held and the final award was passed on 23rd December 1985. Compensation was paid to the petitioner in accordance with the said award. The petitioner did not challenge the amount of compensation by filing a reference u/s.18 of the Act. However, neighbours of the petitioner applied under Section 18 of the Act for a reference for enhancement of compensation The District Court allowed the first reference some time in October/November 1997 and enhanced the compensation payable in respect of a neighbouring land. The petitioner thereafter made an application on 27th November 1997 for enhancement of the compensation under sub-section (1) of section 28A of the Act to the Special Land Acquisition Officer who was exercising the powers of the Collector. By his award dated 29th August 1998the Special Land Acquisition Officer partly allowed the petitioners' application and partly

enhanced the compensation. The petitioners thereafter made an application under sub-section 3 of section 28A on 7th January 2000 requesting the Land Acquisition Officer to make a reference to the District Court for further enhancement. By an order dated 2nd February 2000, the Special Land Acquisition Officer, the respondent no.1 herein rejected the application as barred by limitation. That order is impugned in this petition.

4. Learned counsel for the petitioner submitted that though the respondent no.1 passed an award on 29th August 1998 he did not issue any notice to the petitioner. The petitioner was therefore not aware of the award. He submitted that petitioner was entitled to file an application within six weeks of the service of notice under section 12(2) of the Land Acquisition Officer. Since no notice was ever served the period did not begin to run and the application made by the petitioner for reference on 7th January 2000 was within limitation.

5. Per Contra, learned AGP for the respondent submitted that the petitioner was entitled to make an application within a period of six weeks from the date

of service of the notice under section 12(2) or within the period of six months from the date of the publishing of the award, whichever period shall first expire. Since the award was passed on 29th August 1998, the period of six months from the date of the passing of the award expired on 28th February 1999. The petitioner therefore could have made the application on or before 28th February 1999. As the application was made on 7th January 2000, it was not made within the prescribed period and was barred.

6. Sub-section (3) of section 28 prescribes that any person who does not accept the award under sub-section (2) of section 28A may by a written application require the Collector to refer the matter for determination of the Court and the provisions of section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s.18. By reason of sub-section (3) of section 28A, provisions of section 18 apply for a reference to be made under that section. Sub-section (2) of section 18 of the Act prescribes the period within which an application for reference is to be made and reads thus:

18 (2) The application shall state the

> grounds on which objection to the award is taken. Provided that every such application shall be made -
>
> (a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector’s award;
>
> (b) in other cases, within six weeks of the receipt of the notice form the Collector under section 12,, sub-section (2), or within six months from the date of the Collector’s award, whichever period shall first expire.

As the petitioner was not present when the award under section 28A (2) was made, his case would be covered by clause (b). Under clause (b) of subsection (2) the application for reference is required to be made within six weeks of the receipt of the notice of the award or within six months from the date of the Collector’s award, whichever period shall first expire.

Sub-section (2) provides for two contingencies i) where a notice u/s.12 is issued and another where notice is not so issued. It further lays down that application shall be made within six weeks from the date of the receipt of the notice or within six months from the date of the Collector's award whichever shall first expire. In the present case the period of 6 months from the date of award expired on 28th February, 1999. Hence the application made on 7th January,2000 was not within the time prescribed.

7. I therefore, find no error in the order passed by the respondent no.1. Revision Application is accordingly dismissed with no order as to costs.

(D.G. KARNIK, J)